

TITLE 8. Industrial Relations

Division 1. Department of Industrial Relations

Chapter 4.5. Division of Workers' Compensation

Subchapter 1. Administrative Director--Administrative Rules

**(Plain Text is Emergency Regulation Proposed for Permanent Adoption, Strikethrough
/Underline indicate Changes to Emergency Regulation Language
Double-underline/ Double-strikethrough indicates changes proposed on March 30, 2005)**

ARTICLE 3.6 Independent Medical Review

Section 9768.1 Definitions

(a) As used in this article, the following definitions apply:

(1) "American College of Occupational and Environmental Medicine's Occupational Medicine Practice Guidelines" ("ACOEM") means the American College of Occupational and Environmental Medicine's Occupational Medicine Practice Guidelines, 2nd Edition (2004), published by OEM Press. The Administrative Director incorporates ACOEM by reference. A copy may be obtained from OEM Press, 8 West Street, Beverly Farms, Massachusetts 01915 (www.oempress.com).

(2) "Appropriate specialty" means a medical specialty in an area or areas appropriate to the condition or treatment under review.

(3) "Independent ~~Medical~~ Reviewer" ("IMR") means the physician who is randomly selected pursuant to subdivision (b) of Labor Code section 4616.4.

(4) "In-person examination" means an examination of an injured employee by a physician which involves more than a review of records, and may include a physical examination, discussing the employee's medical condition with the employee, taking a history and performing an examination.

(5) "Material familial affiliation" means a relationship in which one of the persons or entities listed in section 9768.2 is the parent, child, grandparent, grandchild, sibling, uncle, aunt, nephew, niece, spouse, or cohabitant of the ~~Independent~~ Medical Reviewer.

(6) "Material financial affiliation" means a financial interest (owns a legal or equitable interest of more than 1% interest in the party, or a fair market value in excess of \$2000, or relationship of director, advisor, or active participant) in any person or entity listed in

section 9768.2. It also means any gift or income of more than \$300 in the preceding year except for income for services as a second opinion physician, third opinion physician, treating physician, Agreed Medical Evaluator, Qualified Medical Evaluator, or ~~Independent~~ ~~Medical~~ ~~Reviewer~~.

(7) “Material professional affiliation” means any relationship in which the ~~Independent~~ ~~Medical~~ ~~Reviewer~~ shares office space with, or works in the same office of, any person or entity listed in section 9768.2.

(8) “Medical emergency” means a medical condition manifesting itself by acute symptoms of sufficient severity such that the absence of immediate medical attention could reasonably be expected to place the patient's health in serious jeopardy.

(9) “Medical Provider Network Contact” (“MPN Contact”) means the individual(s) designated by the MPN Applicant in the employee notification who is responsible for answering employees’ questions about the Medical Provider Network and is responsible for assisting the employee in arranging for an ~~Independent~~ ~~Medical~~ ~~Review~~.

(10) “Panel” means the contracted providers in a specific specialty.

(11) “Relevant medical records” means all information that was considered in relation to the disputed treatment or diagnostic service, including: (A) a copy of all correspondence from, and received by, any treating physician who provided a treatment or diagnostic service to the injured employee in connection with the injury; (B) a complete and legible copy of all medical records and other information used by the physicians in making a decision regarding the disputed treatment or diagnostic service; (C) the treating physician’s report with the disputed treatment or diagnosis; and (D) the second and third opinion physicians’ reports.

~~(10)~~ (12) “Residence” means the covered employee’s primary residence.

Authority: Sections 133 and 4616, Labor Code.

Reference: Section 4616.4, Labor Code.

Section 9768.2 Conflicts of Interest

(a) The IMR shall not have any material, professional, familial, or financial affiliation with any of the following:

- (1) The injured employee’s employer or employer’s workers’ compensation insurer;
- (2) Any officer, director, management employee, or attorney of the injured employee’s medical provider network, employer or employer’s workers’ compensation insurer;
- (3) Any treating health care provider proposing the service or treatment;

- (4) The institution at which the service or treatment would be provided, if known;
 - (5) The development or manufacture of the principal drug, device, procedure, or other therapy proposed for the injured employee whose treatment is under review; or
 - (6) The injured employee, the injured employee's immediate family, or the injured employee's attorney.
- (b) The IMR shall not have a contractual agreement to provide physician services for the injured employee's MPN if the IMR is within a 35 mile radius of the treating physician.
- (c) The IMR shall not have previously treated or examined the injured employee.

Authority: Sections 133 and 4616, Labor Code.

Reference: Section 4616.4, Labor Code.

Section 9768.3 Qualifications of Independent Medical Reviewers

(a) To qualify to be on the Administrative Director's list of ~~Independent~~ ~~Medical~~ ~~Reviewers~~, a physician shall file a Physician Contract Application pursuant to section 9768.5 that demonstrates to the satisfaction of the Administrative Director that the physician:

- (1) Is board certified. For physicians, the Administrative Director shall recognize only specialty boards recognized by the appropriate California licensing board.
- (2) Has an unrestricted license as a physician in California under the appropriate licensing Board;
- (3) Is not currently under accusation by any governmental ~~physician~~ licensing agency for a quality of care violation, fraud related to medical practice, or felony conviction or conviction of a crime related to the conduct of his or her practice of medicine;
- (4) Has not been terminated or had discipline imposed by the Industrial Medical Council or Administrative Director in relation to the physician's role as a Qualified Medical Evaluator; is not currently under accusation by the Industrial Medical Council or Administrative Director; has not been denied renewal of Qualified Medical Evaluator status, except for non-completion of continuing education or for non-payment of fees; has neither resigned nor failed to renew Qualified Medical Evaluator status while under accusation or probation by the Industrial Medical Council or Administrative Director or after notification that reappointment as a Qualified Medical Evaluator may or would be denied for reasons other than non-completion of continuing education or non-payment of fees; and has not filed any applications or forms with the Industrial Medical Council or Administrative Director which contained any untrue material statements;

(5) Has not been convicted of a felony crime or a crime related to the conduct of his or her practice of medicine; and

(6) Has no history of disciplinary action or sanction, including but not limited to, loss of staff privileges or participation restrictions taken or pending by any hospital, government or regulatory body.

Authority: Sections 133 and 4616, Labor Code.

Reference: Section 4616.4, Labor Code.

Section 9768.4 IMR Contract Application Procedures

(a) A physician seeking to serve as an ~~Independent~~ ~~Medical~~ Reviewer shall:

(1) Apply to the Administrative Director on the Physician Contract Application set forth in section 9768.5.

(2) Furnish a certified copy of his or her board certification, a copy of his or her current license to practice medicine, and submit other documentation of his or her qualifications as the Administrative Director may require.

(3) Designate specialties based on each of his or her board certifications.

(4) Designate the address(es) of the physician's office with necessary medical equipment where in-person examinations will be held.

(5) Agree to see any injured worker assigned to him or her within 30 days unless there is a conflict of interest as defined in section 9768.2.

(6) During the application process and after being notified by the Administrative Director that the contract application has been accepted, the physician shall keep the Administrative Director informed of any change of address, telephone, email address or fax number, and of any disciplinary action taken by a licensing board.

(b) The contract application, completed by the physician, and any supporting documentation included with the contract application, shall be filed at the Administrative Director's office listed on the form. The contract application submitted by the physician may be rejected if it is incomplete, contains false information or does not contain the required supporting documentation listed in this section.

(c) The Administrative Director shall maintain a list of physicians who have applied, and whom the Administrative Director has contracted with to conduct ~~Independent~~ ~~Medical~~ Reviews under Labor Code section 4616.4.

(d) The IMR contract term is two years. A physician may apply to serve for subsequent two year terms by following the procedure set forth in subdivision (a).

Authority: Sections 133 and 4616, Labor Code.

Reference: Section 4616.4, Labor Code.

Section 9768.5 Physician Contract Application Form

[DWC Form]

Authority: Sections 133 and 4616, Labor Code.

Reference: Section 4616.4, Labor Code.

Section 9768.6 Administrative Director's Action on Contract Application Submitted by Physician

(a) After reviewing a completed contract application submitted by a physician, if the Administrative Director finds that the physician meets the qualifications, he/she shall accept the contract application made by the physician to be an ~~Independent~~ ~~Medical~~ ~~Reviewer~~ by executing the IMR contract, notify the physician by mail, and add the physician's name to the list of ~~Independent~~ ~~Medical~~ ~~Reviewers~~. The contract term shall be for a two-year term beginning with the date of acceptance by the Administrative Director.

(b) If the Administrative Director determines that a physician does not meet the qualifications, he/she shall notify the physician by mail that the physician's contract application is not accepted and the reason for the rejection.

(c) A physician whose contract application has not been accepted may reapply.

(d) If the Administrative Director denies a physician's contract application following at least two subsequent submissions, the physician may seek further review of the Administrative Director's decision by filing an appeal with the Workers' Compensation Appeals Board, and serving a copy on the Administrative Director, within twenty days after receipt of the denial.

Authority: Sections 133 and 4616, Labor Code.

Reference: Sections 4616.4 and 5300(f), Labor Code.

Section 9768.7 IMR Request to Be Placed on Voluntary Inactive Status

A physician may request to be placed on the inactive list during the IMR contract term. The physician shall submit the request to the Administrative Director and specify the time period that he or she is requesting to be on voluntary inactive status. The two-year contract term is not extended due to a physician's request to be placed on voluntary inactive status.

Authority: Sections 133 and 4616, Labor Code

Reference: Section 4616.4, Labor Code.

Section 9768.8 Removal of Physicians from Independent Medical Reviewer List

(a) The Administrative Director may cancel the IMR contract and remove a physician from the ~~Independent~~ ~~Medical~~ ~~Reviewer~~ list if the Administrative Director determines based upon the Administrative Director's monitoring of reports:

(1) That the physician, having been notified by the Administrative Director of the physician's selection to render an ~~Independent~~ ~~Medical~~ ~~Review~~, has not issued the ~~Independent~~ ~~Medical~~ ~~Review~~ report in a case within the time limits prescribed in these regulations on more than one occasion; or

(2) That the physician has not met the reporting requirements on more than one occasion; or

(3) That the physician has at any time failed to disclose to the Administrative Director that the physician had a conflict of interest pursuant to section 9768.2; or

(4) That the physician has failed to schedule appointments within the time frame required by these regulations on more than one occasion; or

(5) That the physician has failed to maintain the confidentiality of medical records and the review materials consistent with the applicable state and federal law.

(b) The Administrative Director shall cancel the IMR contract and remove a physician from the ~~Independent~~ ~~Medical~~ ~~Reviewer~~ list if the Administrative Director determines:

(1) That the physician no longer meets the qualifications to be on the list; or

(2) That the physician's contract application to be on the list contained material statements which were not true.

(c) The Administrative Director shall place a physician on an inactive list for up to the end of the two year contract term whenever the Administrative Director determines that the appropriate licensing Board from whom the physician is licensed has filed an accusation for a quality of care violation, fraud related to medical practice, or conviction of a felony crime or a crime related to the conduct of his or her practice of medicine against the physician or taken other action restricting the physician's medical license. If the accusation or action is later withdrawn, dismissed or determined to be without merit during the two year contract term, the physician shall advise the Administrative Director who will then remove the physician's name from the inactive list. If the accusation or action is withdrawn, dismissed or determined to be without merit after the expiration of the two year contract term, the physician may reapply to serve as an ~~Independent~~ ~~Medical~~ ~~Reviewer~~ pursuant to section 9768.4.

(d) Upon removal of a physician from the ~~Independent~~ ~~Medical~~ ~~Reviewer~~ list or placement on the inactive list, the Administrative Director shall advise the physician by mail of the removal or placement on the inactive list, the Administrative Director's reasons for such action, and the right to request a hearing on the removal from the IMR list or placement on the inactive list.

(e) A physician who has been mailed a notice of removal from the list or placement on the inactive list, may, within 30 calendar days of the mailing of the notice, request a hearing by filing a written request for hearing with the Administrative Director. If a written request for hearing is not received by the Administrative Director within 30 calendar days of the mailing of the notice, the physician shall be deemed to have waived any appeal or request for hearing.

(f) Upon receipt of a written request for hearing, the Administrative Director shall prepare an accusation and serve the applicant physician with the accusation, as provided in Government Code section 11503.

(g) Hearings shall be held by the Administrative Director or his or her designee under the procedures of Chapter 5 of Part 1 of Division 3 of Title 2 of the Government Code (commencing with section 11500) and the regulations of the Office of Administrative Hearings (Title 1, California Code of Regulations, section 1000 et seq.).

(h) Failure to timely file a notice of defense or failure to appear at a noticed hearing or conference shall constitute a waiver of a right to a hearing.

(i) A physician who has been removed from the list may petition for reinstatement after one year has elapsed since the effective date of the Administrative Director's decision on the physician's removal. The provisions of Government Code section 11522 shall apply to such petition.

Authority: Sections 133 and 4616, Labor Code; Section 11400.20, Government Code.

Reference: Section 4616.4, Labor Code; Sections 11415.10, 11503 and 11522, Government Code.

Section 9768.9 Procedure for Requesting an Independent Medical Review

(a) If a covered employee disputes the diagnostic service, diagnosis, or medical treatment prescribed by the second opinion physician, the injured employee may seek the opinion of a third physician in the MPN. The covered employee and the employer or insurer shall comply with the requirements of section 9767.7(d). Additionally, at the time of the selection of the physician for a third opinion, the MPN Contact shall notify the covered employee about the Independent Medical Review process and provide the covered employee with an “~~Application for~~ Independent Medical Review Application” form set forth in section 9768.10. The MPN Contact shall fill out the “MPN Contact ~~s~~Section” of the form and list the specialty of the treating physician and an alternative specialty, if any, that is different from the specialty of the treating physician.

(b) If a covered employee disputes either the diagnostic service, diagnosis or medical treatment prescribed by the third opinion physician, the covered employee may request an Independent Medical Review by filing the completed ~~Application for~~ Independent Medical Review Application form with the Administrative Director. The covered employee shall complete the “employee section” of the form, indicate on the form whether he or she requests an in-person examination or record review, and may list an alternative specialty, if any, that is different from the specialty of the treating physician.

(c) The Administrative Director shall select an IMR with an appropriate specialty within ten business days of receiving the ~~Application for~~ Independent Medical Review Application form. The Administrative Director’s selection of the IMR shall be based on the specialty of the treating physician, the alternative specialties listed by the covered employee and the MPN Contact, and the information submitted with the ~~Application for~~ Independent Medical Review Application.

(d) If the covered employee requests an in-person examination, the Administrative Director shall randomly select a physician from the ~~list~~ panel of available ~~Independent~~ ~~Medical~~ ~~Reviewers~~, with an appropriate specialty, who has an office located within thirty miles of the employee’s residence address, to be the ~~Independent~~ ~~Medical~~ ~~Reviewer~~. If there is only one physician with an appropriate specialty within thirty miles of the employee’s residence address, that physician shall be selected to be the ~~Independent~~ ~~Medical~~ ~~Reviewer~~. If there are no physicians with an appropriate specialty who have offices located within thirty miles of the employee’s residence address, the Administrative Director shall search in increasing five mile increments, until one physician is located. If there are no available physicians with this appropriate specialty, the Administrative Director may choose another specialty based on the information submitted.

(e) If the covered employee requests a record review, then the Administrative Director shall randomly select a physician with an appropriate specialty from the ~~list~~ panel of available ~~Independent~~ ~~Medical~~ ~~Reviewers~~ to be the IMR. If there are no physicians

with an appropriate specialty, the Administrative Director may choose another specialty based on the information submitted.

(f) The Administrative Director shall send written notification of the name and contact information of the IMR to the covered employee, the employee's attorney, if any, the MPN Contact and the IMR. The Administrative Director shall send a copy of the completed ~~Application for Independent Medical Review~~ Application to the IMR.

(g) The covered employee, MPN Contact, or the selected IMR can object within 10 calendar days of receipt of the name of the IMR to the selection if: there is a conflict of interest as defined by section 9768.2. If the IMR determines that he or she does not practice the appropriate specialty, the IMR shall withdraw within 10 calendar days of receipt of the notification of selection. If this conflict is verified or the IMR withdraws, the Administrative Director shall select another IMR from the same specialty. If there are no available physicians with the same specialty, the Administrative Director may select an IMR with another specialty based on the information submitted and in accordance with the procedure set forth in subdivision (d) for an in-person examination and subdivision (e) for a record review.

(h) If the covered employee requests an in-person exam, within 60 calendar days of receiving the name of the IMR, the covered employee shall contact the IMR to arrange an appointment. If the covered employee fails to contact the IMR for an appointment within 60 calendar days of receiving the name of the IMR, then the employee shall be deemed to have waived the IMR process with regard to this disputed diagnosis or treatment of this treating physician. The IMR shall schedule an appointment with the covered employee within 30 calendar days of the request for an appointment, unless all parties agree to a later date. The IMR shall notify the MPN Contact of the appointment date.

(i) The covered employee shall provide written notice to the Administrative Director and the MPN Contact if the covered employee decides to withdraw the request for an ~~Independent Medical Review~~.

(j) During this process, the employee shall remain ~~is required to continue his or her treatment with the treating physician or a physician of his or her choice within the MPN for treatment pursuant to section 9767.6.~~

Authority: Sections 133 and 4616, Labor Code.

Reference: Sections 4616.3 and 4616.4, Labor Code.

Section 9768.10 ~~Application for Independent Medical Review~~ Application (Form)

[DWC Form]

Authority: Sections 133 and 4616, Labor Code.

Reference: Sections 4616.3 and 4616.4, Labor Code.

~~Application for Independent Medical Review~~ Application
(Division of Workers' Compensation – 8 CCR §9768.10 Mandatory Form ~~1/1/05 3/204/30/05~~)

Employee Section: The Employee shall complete this section and send the completed form to the Administrative Director. Mailing address: Dept. of Industrial Relations, Division of Workers' Compensation, P.O. Box 8888, San Francisco, CA 94128-8888

Employee Name

Employee Phone Number

Employee's Address

Employee's Attorney's Name, if applicable

Attorney's Phone Number

Attorney's Address

Pursuant to Labor Code section 4616.4, I request that the Administrative Director set an Independent Medical Review within 30 days from receipt of this Application.

Check one: ☐ Request for In-Person Examination ☐ Request for Record Review (no In-Person Examination)

Is interpreter needed for exam? _____ If yes, language: _____

Describe diagnosis and part of body affected: _____

Reason for request for Independent Medical Review. Please explain if the dispute involves the diagnosis, treatment or a test (attach additional page or additional materials, such as medical records, if necessary):

Select an alternative specialty, other than specialty of treating physician, if any, from the list on the instructions for this form:

Release: I, _____ (injured employee or person authorized pursuant to law to act on behalf of the injured employee), authorize the release of relevant medical records and treatment information to the Independent Medical Reviewer.

Signature of injured employee or authorized person

Date

Medical Provider Network Contact Section: The MPN Contact shall complete this section and send the form to the employee.

Employee

Employer

Insurer

Claim Number

Medical Provider Network

Date of Injury

Treating Physician

Specialty

Address

2nd Opinion Physician and specialty

3rd Opinion Physician and specialty

Select an alternative specialty other than specialty of treating physician, if any, from the list on the back of this form:

I declare under penalty of perjury that I mailed a copy of the Application for IMR to the above named Employee on

Date

Signature

Phone number and email of MPN Contact

Name of MPN Contact	Address
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Instructions for ~~Application for~~ Independent Medical Review Application Form (1/1/05 3/4/30/05)

Instructions for MPN Contact: At the time of the selection of the physician for a third opinion, you are required to notify the covered employee about the Independent Medical Review process and provide the covered employee with this “~~Application for Independent Medical Review~~ Application” form. You are required to fill out the “MPN Contact section” of the form. You must then send the form to the employee, who will fill out the top section of the form and send it to the Division of Workers’ Compensation. The DWC will send you written notification of the name and contact information of the ~~Independent~~ Medical ~~Reviewer~~. You must then send the employee’s relevant medical records reports, as defined by section 9768.1(a)(11) ~~including the treating physician’s report with the disputed treatment or diagnosis and the second and third physicians’ reports~~ to the ~~Independent~~ Medical ~~Reviewer~~. A copy of the medical reports must also be sent to the employee.

Instructions for Injured Employee: This application is being sent to you because you have requested a third opinion to address your dispute with your treating doctor’s diagnosis, suggested test, or suggested medical treatment. Please wait until you read the report from the third opinion doctor before you fill out this form. If the report resolves your dispute, then you do not need to fill out this form. If you still have a dispute with your treating doctor, then you may request an ~~Independent~~ Medical ~~Review~~ by completing this form and sending it to: Dept. of Industrial Relations, Division of Workers’ Compensation, P.O. Box 8888, San Francisco, CA 94128-8888.

An ~~Independent~~ Medical ~~Review~~ is done by a physician who does not work directly with your doctor. You can visit that doctor and be examined or you can choose to have the doctor review your records. Indicate on the form whether you want to be examined (in-person examination) or if you only want to have your records reviewed.

The specialty of the doctor will be the same as the specialty of your treating physician, if possible. Not all types of doctors can be an Independent Medical Reviewer. You may select another type of doctor in case your doctor’s specialty is not available. To do this, look at the list of specialists below and chose one type. Indicate this choice on the application. You will receive the name and contact information of the ~~Independent~~ Medical ~~Reviewer~~ from the Division of Workers’ Compensation. When you receive the name of the ~~Independent~~ Medical ~~Reviewer~~, you must make an appointment within 60 days. The ~~Independent~~ Medical ~~Reviewers~~ is required to schedule an appointment with you within 30 days. If you fail to make the appointment with the Independent Medical Reviewer within 60 days, you will not be allowed to have an ~~Independent~~ Medical ~~Review~~ on this dispute.

Written notice must be made to the Administrative Director and MPN Contact if you wish to withdraw the request for an ~~Independent~~ Medical ~~Review~~ after this form has been submitted.

SPECIALTY CODES

MAI Allergy and Immunology	MAA Anesthesiology
MRS Colon & Rectal Surgery	MDE Dermatology
MEM Emergency Medicine	MFP Family Practice
MPM General Preventive Medicine	MHA <u>MHD</u> Hand – Orthopaedic Surgery, Plastic Surgery, General Surgery
MMM Internal Medicine	MMV Internal Medicine – Cardiovascular Disease
MME Internal Medicine – Endocrinology Diabetes and Metabolism	MMG Internal Medicine - Gastroenterology
MMH Internal Medicine – Hematology	MMI Internal Medicine – Infectious Disease
MMO Internal Medicine – Medical Oncology	MMN Internal Medicine - Nephrology
MMP Internal Medicine – Pulmonary Disease	MMR Internal Medicine – Rheumatology
MPN Neurology	MNS Neurological Surgery
MNM Nuclear Medicine	MOG Obstetrics and Gynecology
MPO Occupational Medicine	MOP Ophthalmology
MOS Orthopaedic Surgery	MTO Otolaryngology
MAP Pain Management –Psychiatry and Neurology, Physical Medicine and Rehabilitation, Anesthesiology	MHA Pathology
MEP Pediatrics	MPR Physical Medicine & Rehabilitation
MPS Plastic Surgery	MPD Psychiatry
MRD Radiology	MSY Surgery
MSG Surgery – General Vascular	MTS Thoracic Surgery
MTOMTX Toxicology – Preventive Medicine, Pediatrics, Emergency	MUU Urology
POD Podiatry	PSY Psychology

Section 9768.11 In-Person Examination or Record Review IMR Procedure

(a) The MPN Contact shall send all relevant medical records, ~~including x-ray, MRI, CT, and other diagnostic studies, the treating physician's report, with the disputed treatment or diagnosis, the second and third opinion physicians' reports, and any other medical reports which address the disputed diagnostic services, diagnosis or medical treatment to the IMR. The MPN Contact shall furnish a copy of all correspondence from, and received by, any treating physician who provided a treatment or diagnostic service to the covered employee in connection to the injury.~~ The MPN Contact shall also send a copy of the documents to the covered employee. The employee may furnish any relevant medical records or additional materials to the ~~Independent~~ Medical ~~Reviewer~~, with a copy to the MPN Contact. If an in-person examination is requested and if a special form of transportation is required because of the employee's medical condition, it is the obligation of the MPN Contact to arrange for it. The MPN Contact shall furnish transportation and arrange for an interpreter, if necessary, in advance of the in-person examination. All reasonable expenses of transportation shall be incurred by the insurer or employer pursuant to Labor Code section 4600. Except for the in-person examination itself, the ~~Independent~~ Medical ~~Reviewer~~ shall have no ex parte contact with any party. Except for matters dealing with scheduling appointments, scheduling medical tests and obtaining medical records, all communications between the ~~Independent~~ Medical ~~Reviewer~~ and any party shall be in writing, with copies served on all parties.

(b) If the IMR requires further tests, the IMR shall notify the MPN Contact within one working day of the appointment. All tests shall be consistent with the medical treatment utilization schedule adopted pursuant to Labor Code section 5307.27 or, prior to the adoption of this schedule, the ACOEM guidelines, and for all injuries not covered by the medical treatment utilization schedule or the ACOEM guidelines, in accordance with other evidence based medical treatment guidelines generally recognized by the national medical community and that are scientifically based.

(c) The IMR may order any diagnostic tests necessary to make his or her determination regarding medical treatment or diagnostic services for the injury or illness but shall not request the employee to submit to an unnecessary exam or procedure. If a test duplicates a test already given, the IMR shall provide justification for the duplicative test in his or her report.

(d) If the employee fails to attend an examination with the IMR and fails to reschedule the appointment within five business days of the missed appointment, the IMR shall perform a review of the records and make a determination based on those records.

(e) The IMR shall serve the report on the Administrative Director, the MPN Contact, the employee and the employee's attorney, if any, within 20 days after the in-person examination or completion of the records review.

(f) If the disputed health care service has not been provided and the IMR certifies in writing that an imminent and serious threat to the health of the injured employee exists, including, but not limited to, the potential loss of life, limb, or bodily function, or the

immediate and serious deterioration of the injured employee, the report shall be expedited and rendered within three business days of the in-person examination by the IMR.

(g) Subject to approval by the Administrative Director, reviews not covered under subdivision (f) may be extended for up to three business days in extraordinary circumstances or for good cause.

(h) Extensions for good cause shall be granted for:

(1) Medical emergencies of the IMR or the IMR's family;

(2) Death in the IMR's family; or

(3) Natural disasters or other community catastrophes that interrupt the operation of the IMR's office operations.

(i) Utilizing the medical treatment utilization schedule established pursuant to Labor Code section 5307.27 or, prior to the adoption of this schedule, the ACOEM guidelines, and taking into account any reports and information provided, the IMR shall determine whether the disputed health care service is consistent with the recommended standards. For injuries not covered by the medical treatment utilization schedule or by the ACOEM guidelines, the treatment rendered shall be in accordance with other evidence-based medical treatment guidelines which are generally recognized by the national medical community and scientifically based.

(j) The IMR shall not treat or offer to provide medical treatment for that injury or illness for which he or she has done an ~~in~~Independent ~~medical~~ ~~Review~~ evaluation for the employee unless a medical emergency arises during the in-person examination.

(k) Neither the employee nor the employer nor the insurer shall have any liability for payment for the ~~in~~Independent ~~medical~~ ~~Review~~ which was not completed within the required timeframes unless the employee and the employer each waive the right to a new ~~in~~Independent ~~medical~~ ~~Review~~ and elect to accept the original evaluation.

Authority: Sections 133 and 4616, Labor Code.

Reference: Sections 4616.4 and 5307.27, Labor Code.

Section 9768.12 Contents Of Independent Medical Review Reports

(a) Reports of ~~in~~Independent ~~medical~~ ~~Reviewers~~ shall include:

(1) The date of the in-person examination or record review;

(2) The patient's complaint(s);

(3) A listing of all information received from the parties reviewed in preparation of the report or relied upon for the formulation of the physician's opinion;

(4) The patient's medical history relevant to the diagnostic services, diagnosis or medical treatment;

(5) Findings on record review or in-person examination;

(6) The IMR's diagnosis;

(7) The physician's opinion whether or not the proposed treatment or diagnostic services are appropriate and indicated. If the proposed treatment or diagnostic services are not appropriate or indicated, any alternative diagnosis or treatment recommendation consistent with the medical treatment utilization schedule shall be included;

(8) An analysis and determination whether the disputed health care service is consistent with the medical treatment utilization schedule established pursuant to Labor Code section 5307.27 or, prior to the adoption of this schedule, the ACOEM guidelines. For injuries not covered by the medical treatment utilization schedule or by the ACOEM guidelines, an analysis and determination whether the treatment rendered is in accordance with other evidence-based medical treatment guidelines which are generally recognized by the national medical community and scientifically based; and

(9) The signature of the physician.

(b) The report shall be in writing and use layperson's terms to the maximum extent possible.

(c) An ~~Independent~~ ~~Medical~~ ~~Reviewer~~ shall serve with each report the following executed declaration made under penalty of perjury:

"I declare under penalty of perjury that this report is true and correct to the best of my knowledge and that I have not violated Labor Code section 139.3.

Date

Signature

Authority: Sections 133 and 4616, Labor Code.

Reference: Sections 139.3, 4616.4, and 5307.27, Labor Code.

Section 9768.13 Destruction of Records by the Administrative Director

The Administrative Director may destroy any forms or documents submitted to the Administrative Director as part of the IMR process two years after the date of receipt.

Authority: Sections 133 and 4616, Labor Code.

Reference: Section 4616.4, Labor Code;

Section 9768.14 Retention of Records by Independent Medical Reviewer

Each ~~Independent~~ ~~Medical~~ ~~Reviewer~~ shall retain all comprehensive medical reports completed by the ~~Independent~~ ~~Medical~~ ~~Reviewer~~ for a period of five years from the date of the IMR report.

Authority: Sections 133 and 4616, Labor Code.

Reference: Section 4616.4, Labor Code.

Section 9768.15 Charges for Independent Medical Reviewers

(a) Payment for the services of the ~~Independent~~ ~~Medical~~ ~~Reviewers~~ shall be made by the employer or insurer.

(b) The fee shall be based on the Official Medical Fee Schedule using confirmatory consultation codes (99271 through 99275 for in-person examinations consultations, or 99271 through 99273 for evaluations not requiring an in-person examination), 99080 for reports, and 99358 for record reviews), and any other appropriate codes or modifiers.

(c) An IMR shall not accept any additional compensation from any source for his or her services as an IMR except for services provided to treat a medical emergency that arose during an in-person examination pursuant to section 9768.11(j).

Authority: Sections 133 and 4616, Labor Code.

Reference: Section 4616.4, Labor Code.

Section 9768.16 Adoption of Decision

(a) The Administrative Director shall immediately adopt the determination of the ~~Independent~~ ~~Medical~~ ~~Reviewer~~ and issue a written decision within 5 business days of receipt of the report.

(b) The parties may appeal the Administrative Director's written decision by filing a petition with the Workers' Compensation Appeals Board and serving a copy on the Administrative Director, within twenty days after receipt of the decision.

Authority: Sections 133 and 4616, Labor Code.

Reference: Sections 4616.4 and 5300(f), Labor Code.

Section 9768.17 Treatment Outside the Medical Provider Network

(a) If the IMR agrees with the diagnosis, diagnostic service or medical treatment prescribed by the treating physician, the covered employee shall continue to receive medical treatment from physicians within the MPN.

(b) If the IMR does not agree with the disputed diagnosis, diagnostic service or medical treatment prescribed by the treating physician, the covered employee shall seek medical treatment with a physician of his or her choice either within or outside the MPN. If the employee chooses to receive medical treatment with a physician outside the MPN, the treatment is limited to the treatment recommended by the IMR or the diagnostic service recommended by the IMR.

(c) The medical treatment shall be consistent with the medical treatment utilization schedule established pursuant to Labor Code section 5307.27 or, prior to the adoption of this schedule, the ACOEM guidelines. For injuries not covered by the medical treatment utilization schedule or by the ACOEM guidelines, the treatment rendered shall be in accordance with other evidence-based medical treatment guidelines which are generally recognized by the national medical community and scientifically based.

(d) The employer or insurer shall be liable for the cost of any approved medical treatment in accordance with Labor Code section 5307.1 or 5307.11.

Authority: Sections 133 and 4616, Labor Code.

Reference: Sections 4616.4, 5307.1, 5307.11 and 5307.27, Labor Code.